terstate freight in the cars and one which does not. The garnishment certainly, and the attachment in so far as it does not tie up interstate freight, do not amount to regulations of interstate commerce at all. Their real and proper purpose is to secure the payment of debts, and they affect only indirectly interstate commerce. In this respect they are like a law taxing rolling stock,[5] which is not considered a regulation of interstate commerce when a domestic interstate carrier is taxed, and does not become so, by reason of the indirect effect upon forwarding agreements, when cars which have gained a situs in another state are taxed there.

But an attachment, whether of cars of a resident or non-resident carrier, which directly stops the delivery of interstate freight is very different. Though aimed to secure debts, it has a direct effect upon articles of interstate commerce not connected with the debt. In that way it is as objectionable as a law which, to exclude diseased cattle from a state, orders all cattle excluded,[6] or one which, to restrict pauper immigrants, orders all immigrants taxed.[7] An attachment of this nature may be said to regulate interstate commerce. Moreover, as a regulation, it is clearly contrary to the intent of Congress; for it would either greatly delay or cause the trans-shipment of interstate freight, — just those inconveniences which the federal statute authorizing arrangements for continuous carriage[4] was passed to avoid. It is curious that the cases of domestic attachment have not noticed the possibility that it, as well as foreign attachment, may often affect interstate commerce.[8] An analogy for the difference between an attachment which directly ties up interstate freight and one which does not may perhaps be found in cases which hold that there may be a valid attachment of a mail boat while the mail is not on board;[9] but not of a mail wagon which is in actual use.[10]

DUE PROCESS OF LAW IN THE COLLECTION OF TAXES. — Tax assessments and collections are seldom made by the regular courts, but by bodies deriving their power from variously framed statutes. As a general rule, due process of law in this connection has only two requirements, aside from the general requirement of jurisdiction: there must be notice of some sort, and there must be a right to a hearing at some stage of the proceedings and before a body capable of giving relief. Other things are matters of procedure. But this rule is open to exception in one class of cases, where the tax is assessed by mere calculation not involving discretion or judgment, as for example a sewer tax assessed according to the area of the land,[1] or a poll tax or license.[2] Whether the statute which establishes the tax, or some other statute on ordinance, provides for notice and hearing for the correction of errors, is not material. Either affords due process.[3] The notice may be merely constructive,[4] not personal, and the hearing need not be

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[5] See 20 HARV. L. REV. 138.
[6] See Railroad Co. *v.* Husen, 95 U. S. 465.
[7] See Henderson *v.* Mayor of New York, 92 U. S. 259.
[8] See Boston, etc., R. R. Co. *v.* Gilmore, 37 N. H. 410.
[9] Parker *v.* Porter, 6 La. 169.
[10] Harmon *v.* Moore, 59 Me. 428.

[1] Gillette *v.* City of Denver, 21 Fed. Rep. 822.
[2] See Hagar *v.* Reclamation Dist., 111 U. S. 701, 709.
[3] Spencer *v.* Merchant, 125 U. S. 345; Hodge *v.* Muscatine Co., 196 U. S. 276.
[4] Bells Gap Ry. *v.* Pennsylvania, 134 U. S. 232.

before a court,[5] nor need a right to an appeal and rehearing be given.[6] But such notice and hearing must be given as of right and not by favor.[7]

When the tax can be collected only by legal proceedings, requiring judicial notice and permitting a hearing as to the merits, there is clearly due process of law.[8] Again, everything necessary is afforded when the statutes expressly allow a suit to enjoin the collection of the taxes, upon the trial of which suit their validity and amount can be questioned.[9] But this ought to be subject to the qualification that there must be constructive notice of some sort given a reasonable time before distraint. In a recent case the Supreme Court has given another application of what is to be considered due process. *Security Trust & Safety Vault Co.* v. *City of Lexington*, U. S. Sup. Ct., Dec. 3, 1906. In this case none of the previously mentioned methods of hearing was provided for by any statute, but the state courts held that the taxpayer was entitled to a hearing on the merits in a suit to enjoin collection of the taxes, and gave such a hearing. The Supreme Court denied the plaintiff's contention that thereafter the enforcement of the taxes was without due process of law. The result accords with the general interpretation of the clause by the Supreme Court, and formulates a doctrine that a state may thus afford the due process required by the Amendment, regard being had to the above-mentioned qualification as to notice. The holding of the state court seems to have amounted to a construction of the taxing statute in view of constitutional restrictions.[10] But it is highly probable that if in this case the original suit to enjoin had been brought in a federal court, it would have succeeded. Injunctions have been frequently granted where notice and hearing were not specifically provided for in any of the foregoing ways.[11]

It is apparently now settled that federal courts will not take the view that due process is lacking because of any hardship or inequality in the method of taxation.[12] The case of Norwood *v.* Baker[13] to the contrary has been so limited that little, if any, ground is now left for its supposed doctrine.[14] Nor will the federal courts construe the Amendment to justify a review of alleged errors in individual instances made by state courts in administering the admittedly due process, if correctly enforced, which the state has provided.[15]

THE CRIMINAL LIABILITY OF CORPORATIONS. — The belief long obtained that since a corporation is only a fictitious person created and invested with certain functions by the state, it was capable of doing only acts expressly permitted in its charter; that anything further, being *ultra vires*, was not the act of the corporation; and hence that there could be no corporate

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[5] Merchants Bank *v.* Pennsylvania, 167 U. S. 461.
[6] Andrews *v.* Swartz, 156 U. S. 272.
[7] Stuart *v.* Palmer, 74 N. Y. 183.
[8] Kentucky Ry. Tax Cases, 115 U. S. 321; Hagar v. Reclamation District, *supra.*
[9] Oskamp *v.* Lewis, 103 Fed. Rep. 906.
[10] See Paulsen *v.* Portland, 149 U. S. 30; Rawlins *v.* Georgia, 201 U. S. 638.
[11] Albany Bank *v.* Maher, 9 Fed. Rep. 884; Scott *v.* Toledo, 36 Fed. Rep. 385.
[12] Walston *v.* Nevin, 128 U. S. 578.
[13] 172 U. S. 269.
[14] See French *v.* Barber Asphalt Co., 181 U. S. 324. See also 14 HARV. L. REV. 1–19; 15 *ibid.* 307.
[15] Arrowsmith *v.* Harmoning, 118 U. S. 194. See 1 HARV. L. REV. 314–326.